

11/29 (12)

INTEROFFICE MEMO

DATE: 8/2/2004
TO: THE BOARD OF SELECTMEN
CC: THE CPC
FROM: JOHN MURRAY *John*
RE: BORROWING AS AUTHORIZED BY THE CPA (MGL C 44B)

As a result of the last CPC meeting, Roland approached me as to the borrowing and repayment requirements of the Community Preservation Act (CPA). As I examine the "Community Preservation Act" as it relates to the issuance of debt, I am concerned with the language and current interpretation of the CPA.

Section 16(b) of the Act continues the surcharge, as adopted by the community, until all contractual obligations incurred by the Town have been fully discharged. While "contract obligations" are not limited to borrowings, debt service on previously issued bonds clearly falls within the definition of "contractual obligations". I believe the common understanding is that this section guarantees the payment of debt service from the CPA Fund. I do not believe so.

Section 11 of the Act authorizes the issuance of "general obligation bonds or notes in anticipation of revenues". General Obligation Bonds are long-term borrowings which are backed by the full revenues of the Town and Revenue Anticipation Notes are short-term notes (less than 1 year and must be re-paid in full no later than June 30th of the fiscal year in which the borrowing occurred). However, the current interpretation of Section 5 limits Town Meeting to approving only the recommendations of the Community Preservation Committee. In addition, the current interpretation of Section 5 allows Town Meeting only to decrease the size of the requested appropriation but not to increase the amount of any appropriation or approving an appropriation, which has not been brought forth by the CPC. In addition, Section 6 of the Act requires appropriation (direct or in a set aside) for open space, historic resources, and community housing but not for debt service on issued bonds or notes (debt service payments may constitute spending for a particular purpose)

In summary, the Act authorizes the issuance of long-term debt, but does not insure or require that debt service be paid from the Town's CPA Fund. In fact, by requiring the issuance of "general obligation bonds" it requires the tax base of the Town to be the guarantor. The Treasurer of the Town is required to insure payment of "general obligation" debt service prior to disbursing any monies for any other obligation or Town Meeting appropriation.

I suggest the following remedy to the problem:

(1) Amend Section 6 of the Act as noted below (Changes are underlined):

CHAPTER 44B. COMMUNITY PRESERVATION

Chapter 44B: Section 6 Annual revenues; open space, historic resources and community housing

Section 6. In every fiscal year the legislative body shall appropriate monies for debt service on any outstanding debt issued upon the recommendation of the community preservation committee, unless at the time the legislative body approved such debt it specifically required the debt service to be appropriated from another revenue source and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, but not including land for recreational use, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town in the commonwealth. The community preservation funds shall not replace existing operating funds, only augment them.

(2) Amend Section 11 of the Act as follows:

Chapter 44B: Section 11 General obligation bonds or notes

Section 11. A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds, revenue bonds, inclusive of all agreements necessary to issue a revenue bond or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized

to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Revenue bonds are bonds that are backed by the specific revenues of an activity such as the CPA and not by the general tax base. However, revenue bonds usually carry a higher interest rate.

The purpose of these two amendments is to allow the legislative branch of each community to decide to pledge is general tax base or only the revenues of the Act. Currently, the Act requires each community to pledge its general tax base as the guarantor of any long-term bond.

As I understand the requirements of the General Court, such legislative changes must be filed within the next few days and as such ask for your approval to submit such draft amendments to Senator Resor as a place holder for filing. My purpose in deeming the amendments as a placeholders is two-fold. The first is to ensure the issue is resolved in the next legislative session. The second is to allow a diverse group including the Treasurer's & Collector's Association, the Association of CPCs, DOR, CPAs and others to be brought together to promote understanding of the problem, understanding of differing positions, and to draft possibly better language. I would also ask your permission to be the lead community in bringing these diverse groups together.